

Docket No. : STILES.1C1CP1

**Customer No.: 20,995**

Application No. : 10/648,686

Filing Date : 8/25/2003

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**APPEAL BRIEF**

Applicant : Stiles, Sharidan Lorraine.

App. No : 10/648,686

Filed : August 25, 2003

For : PERSONAL SHAVING RAZOR

Examiner : Jason D. Prone

Art Unit : 3724

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**Mail Stop Appeal Brief-Patents**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

In accordance with the Notice of Appeal filed December 20, 2007, Applicant submits this Appeal Brief.

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### **I. REAL PARTY IN INTEREST**

Pursuant to 37 C.F.R. 41.37(c)(1), Appellant hereby notifies the Board of Patent Appeals and Interferences that the real party in interest is the inventor, Sharidan L. Stiles, of Redding, CA.

### **II. RELATED APPEALS AND INTERFERENCES**

A Notice of Appeal and Appeal Brief have previously been filed in the instant application, U.S. Application Serial No. 10/648,686. In addition, a Notice of Appeal and Appeal Brief have been filed in the related application, U.S. Application Serial No. 10/219,095, from which the present application claims priority as a continuation-in-part. Appellant is unaware of any other related appeals or interferences.

### **III. STATUS OF CLAIMS**

Claims 1-8, 10-12, 15, 21-24, 27-28, and 33-40 stand finally rejected. Claims 9, 13-14, 16-20, 25-26, and 29-32 stand cancelled. Accordingly, claims 1-8, 10-12, 15, 21-24, 27-28, and 33-40 are the subject of this appeal. The claims on appeal are attached hereto in the Claims Appendix.

### **IV. STATUS OF AMENDMENTS**

The claims have not been amended subsequent to the final Office Action transmitted on October 3, 2007. Thus, the claims on appeal are those submitted in the response transmitted on July 18, 2007, and entered and examined by the Examiner in the final Office Action mailed October 3, 2007.

### **V. SUMMARY OF CLAIMED SUBJECT MATTER**

The subject matter of independent claim 1 relates a personal styling razor, comprising a handle portion having lower, middle and upper longitudinal portions; and a head portion, having a razor blade with a straight cutting edge, attached to said upper longitudinal portion wherein said head portion and said razor blade are configured to permit shaving hair. The cutting edge of said razor blade is substantially perpendicular to a longitudinal axis of the handle. The lower longitudinal portion extends along a first axis, said middle longitudinal portion extends along a

second axis and said upper longitudinal portion extends along a third axis. The second and third axes intersect at a single point and form a fixed extension angle that is less than or equal to ninety degrees. The extension angle is defined by a portion of said second axis starting from the intersection of said second and third axes and extending toward the intersection of the first and second axes, and a portion of said third axis starting from the intersection of said second and third axes and extending toward the razor head, wherein the extension angle faces the front of the razor. The first and said second axes intersect at a single point and form a fixed contour angle that is less than 180 degrees. The contour angle is defined by a portion of said first axis starting from the intersection of said first and second and extending toward the end of said razor handle portion located on said lower handle portion, and a portion of said second axis starting from the intersection of said first and second axes and extending toward the intersection of said second and third axes, wherein the contour angle faces the front of the razor. The head portion has a width of less than or equal to one inch. *See, e.g., Specification as filed* at page 3, lines 5-16; page 6, lines 17-30; page 7, lines 1-24; page 8, lines 9-20; page 10, lines 1-10; figure 1, element 20; figure 6, element elements B, C, 33, 35, and 37; figure 7, element 46; and the claims as originally filed.

The subject matter of independent claim 4 relates to a personal styling razor as described in independent claim 1, except that the second and third axes intersect at a single point and form a fixed extension angle wherein said extension angle is greater than ninety degrees. *See, e.g., Specification as filed* at page 3, lines 5-16; page 6, lines 17-30; page 7, lines 1-24; page 8, lines 9-20; page 10, lines 1-10; figure 1, element 20; figure 6, element elements B, C, 33, 35, and 37; figure 7, element 46; and the claims as originally filed.

The subject matter of independent claim 10 relates to a detail shaving razor, comprising an ergonomically shaped handle portion; and a head portion attached to said handle portion and formed with at least one razor blade having a straight cutting edge wherein said head portion and said razor blade are configured to permit shaving hair. The head portion is less than or equal to 1/2 inch wide. The cutting edge of said razor blade is substantially perpendicular to a longitudinal axis of the handle. The handle portion is adapted to provide increased control over

the head portion during shaving. The handle portion further comprises a front or rear perspective that is substantially hour-glass in shape, having a lower longitudinal portion of a first curved shape; and a middle longitudinal portion of a second curved shape attached lengthwise to said first lower longitudinal portion. A waist portion is formed between said first curved shape and said second curved shape. *See, e.g., Specification as filed* at page 3, lines 5-16; page 8, lines 9-20; page 10, lines 1-10; figure 1, elements 10 and 20; figure 7, element 46; and the claims as originally filed.

## VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issue on appeal is whether claims 1-8, 10-12, 15, 21-24, 27-28, and 33-40 are improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Hollinger (D259,743) in view of Heller (4,700,477) and Lazarchik (4,785,534); or Heller (4,700,477), in view of Lamb (D169,147) and Heinrich (2,139,680) or Carreker (4,461,078); or Hollinger (D259,743) in view of Heller (4,700,477) and Smith (4,335,509).

## VII. ARGUMENT

### A. Summary of the Arguments

The Examiner rejects claims all pending claims 1-8, 10-12, 15, 21-24, 27-28, and 33-40 under 35 U.S.C. § 103(a) as being obvious in view of the cited references at the time the invention was made. The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. This includes establishing that every limitation of the claims is taught or suggested by the cited art, as well as establishing a reason to modify the cited art to arrive at the claimed invention when the cited references are considered in their entirety. Until the Examiner does so, the Applicant need not provide any argument or evidence of non-obviousness. Appellant respectfully submits that at least for the reasons discussed in detail below, the Examiner has failed to establish a *prima facie* case of obviousness. For this reason, the Examiner's rejection of the pending claims under 35 U.S.C. § 103(a) must be reversed.

**B. Detailed Arguments****1. Summary of the Law for a rejection under 35 U.S.C. § 103(a)**

It is well settled that the Examiner “bears the initial burden of presenting a *prima facie* case of unpatentability...” *In re Sullivan*, 498 F.3d 1345 (Fed. Cir. 2007). Until the Examiner has established a *prima facie* case of obviousness, the Applicant need not present arguments or evidence of non-obviousness. To establish a *prima facie* case of obviousness, the Examiner must establish at least three elements. First, the prior art reference (or references when combined) must teach or suggest all of the claim limitations: “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 165 U.S.P.Q. 494, 496 (CCPA 1970); *see also M.P.E.P. § 2143.03*. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091 (Fed. Cir. 1986); *see also M.P.E.P. § 2143.02*. And finally, the Examiner must articulate some reason to modify or combine the cited references that renders the claim obvious. Merely establishing that the claimed elements can be found in the prior art is not sufficient to establish a *prima facie* case of obviousness:

As is clear from cases such as *Adams*, a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (emphasis added).

Instead, the Court has made clear that the Examiner must establish a reason one of skill in the art would have combined the elements of the prior art, and that such reason must be more than a conclusory statement that it would have been obvious.

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. *See In re Kahn*, 441 F.3d 977, 988 (C.A.Fed.2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal

conclusion of obviousness”). *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741 (2007).

Appellant respectfully submits that the Examiner failed to establish a *prima facie* case of obviousness as required by 35 U.S.C. § 103(a) for the reasons detailed below. Thus, until the Examiner has met his initial burden, Appellants need not provide evidence or argument of non-obviousness.

**2. Claims 1-8, 21-22, 27-28, and 33-39 – Rejection over Hollinger and Heller**

Claims 1-8, 21-22, 27-28, and 33-39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hollinger (D259,743) in view of Heller (4,700,477), alone or further in view of Lazarchik (4,785,534). *Final Office Action* at 2, 4, 5, 6, and 9. Appellants submit that the rejection of these claims should be reversed for at least the following reasons.

**a. Claims 1-8, 21-22, 27-28, and 33-39 – The modified Hollinger reference does not meet all the limitations of independent claims 1 and 4, and the cited references teach away from the proposed modifications**

Pending claims 1 and 4, and therefore dependent claim 2-3, 5-8, 21-22, 27-28 and 33-39 require that the claimed razor have “a handle portion having lower, middle and upper longitudinal portions; ... wherein said lower longitudinal portion extends along a first axis, said middle longitudinal portion extends along a second axis and said upper longitudinal portion extends along a third axis; wherein said second and third axes intersect at a single point and form a fixed extension angle” that is “less than or equal to ninety degrees” in claim 1, and “greater than ninety degrees” in claim 4. The Examiner relies on the single razor handle disclosed in Hollinger, U.S. Design Patent 259,743, to reject both claims 1 and 4, as well as dependent claims 2-3, 5-8, 21-22, 27-28, and 33-39. *See Final Office Action* at 2-7 and 9-10.

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In rejecting claim 1, the Examiner argues, referring to Figure 1 of Hollinger as appended to the Office Examiner as Appendix A, that:

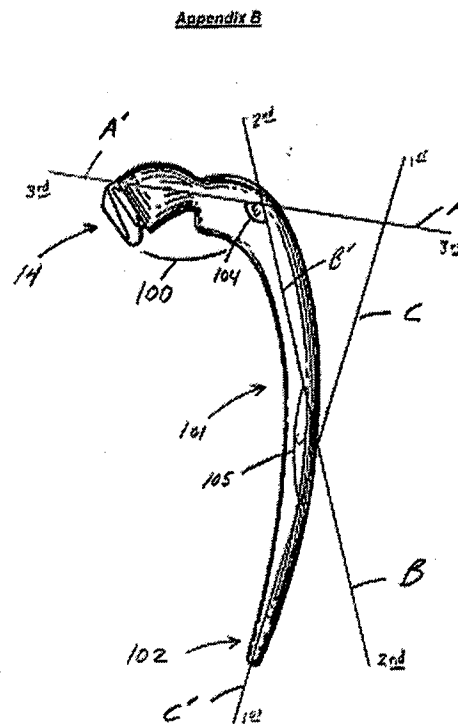
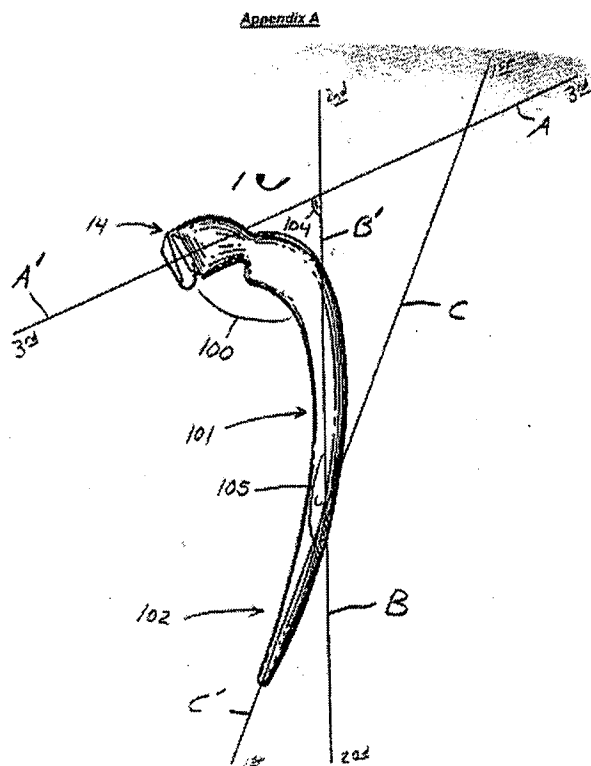
In regards to claim 1, Hollinger discloses the invention including a handle portion having lower (102), middle (101), and upper longitudinal portions (100), ... the lower longitudinal portion extends along a first axis (C), the middle longitudinal portion extends along a second axis (B), the upper longitudinal portion extends along a third axis (A), the second and third axes form a fixed extension angle that is **less than** 90° (104), ..... Final Office Action at 2-3 (emphasis added).

The Examiner then uses the exact same figure from Hollinger to reject claim 4, referring to the labels as found in Appendix B of the final Office Action:

In regards to claim 4, Hollinger discloses the invention including a handle portion having lower (102), middle (101), and upper longitudinal portions (100), ... the lower longitudinal portion extends along a first axis (C), the middle longitudinal portion extends along a second axis (8), the upper longitudinal portion extends along a third axis (A), the second and third axes form a fixed extension angle that is **greater than** 90° (104).... Final Office Action at 5 (emphasis added).

Appendixes A and B from the final Office Action reproducing Figure 1 of Hollinger and referred to in the above paragraphs are reproduced below for the Board's convenience.





Appellant respectfully submits that the Examiner's arguments are flawed, and fail to establish a *prima facie* case of obviousness for at least the reason that they fail to meet the first element discussed above – that the prior art reference(s) must teach or suggest all the claim limitations. As mentioned above, pending claims 1 and 4, and therefore dependent claim 2-3, 5-8, 21-22, 27-28 and 33-39 require that the claimed razor have “a handle portion having lower, middle and upper longitudinal portions; ... wherein said lower longitudinal portion extends along a first axis, said middle longitudinal portion extends along a second axis and said upper longitudinal portion extends along a third axis; wherein said second and third axes intersect at a single point and form a fixed extension angle.”

As can be seen in the figures above, the main portion of the handle disclosed by Hollinger is a continuous curve. As a result, contrary to the Examiner's assertion, Hollinger does not disclose a handle having lower, middle and upper longitudinal portions that extend along a first, second, and third axis, respectively. The continuous nature of the curve means that any arbitrary

designation of a particular point on the curve as the lower, middle, or upper portions of the curve does not result in that portion of the curve extending along an identifiable first, second, or third axis as required by claims 1 and 4, and the claims which depend therefrom. This is made apparent by the fact that the placement of lines A, B, and C in the two figures above are arbitrary – lines A and B are located in different parts of the handle in Appendixes A and B. This is done so that the Examiner can assert that the handle in Figure 1 of Hollinger has an extension angle that is both less than 90° and greater than 90°.

Because any part of the curved handle could be designated the “upper portion,” the line A is arbitrarily placed by the Examiner along the continuous curve of the handle. As a result, the “extension angle (104)” identified by the Examiner simultaneously has a value of less than 90 degrees (Appendix A), and greater than 90 degrees (Appendix B), depending on where lines A and/or B are placed. As the Examiner must acknowledge, claim 1 and claim 4 differ in their scope due to the recited value for the extension angle – less than or equal to ninety degrees for claim 1, and greater than ninety degrees for claim 4. The fact that the Hollinger reference does not disclose the recited handle elements discussed above is made obvious by the fact that based on the Examiner’s reasoning, a single handle disclosed in Hollinger anticipates both claim 1 and claim 4 – claims which are mutually exclusive in scope. Simply put, a continuous curve has no separately identifiable longitudinal portions which extend along a first, second, or third axis, and thus the handle of Hollinger cannot satisfy the claim.

The distinction between Hollinger and the claimed invention of claims 2-3, 5-8, 21-22, 27-28 and 33-39 is clearly shown in the embodiment of handle illustrated in Figure 6A of the instant application for example, which has identifiable lower, middle and upper longitudinal portions that extend along a first, second, and third axis, and thus has a defined extension angle – the placement of lines 33, 35 and 37 in Figure 6A are not arbitrary.

Thus, Appellant submits that Hollinger, even when combined with Heller or Lazarchik, lacks the limitation “a handle portion having lower, middle and upper longitudinal portions; ... wherein said lower longitudinal portion extends along a first axis, said middle longitudinal portion extends along a second axis and said upper longitudinal portion extends along a third

axis; wherein said second and third axes intersect at a single point and form a fixed extension angle” that is “less than or equal to ninety degrees” in claim 1, and “greater than ninety degrees” in claim 4.” For at least this reason, Appellant respectfully submits that the Examiner has failed to establish that claims 1-8, 21-22, 27-28, and 33-39 are obvious in light of the cited art. Because the Examiner has failed to establish a *prima facie* case of obviousness, Appellant need not present any arguments or evidence of non-obviousness, and requests that the rejection under 35 U.S.C. §103(a) be reversed.

In addition to failing to establish that the cited art teaches the limitation discussed above, the Examiner has also failed to establish that the cited references can be combined to meet the limitation of independent claims 1 and 4, “wherein said head portion has a width of less than or equal to one inch,” and the limitations of claims 21 and 27, “wherein said head portion is equal to or less than 1/4 inch wide.”

The Examiner argues that “Heller teaches it is old and well known in the art of razors to incorporate a head portion is that [*sic*] equal to or less than 1/4” wide (Column 2 lines 27-28). Therefore, it would be obvious to one of ordinary skill in the art, at the time of the invention, to have provided Hollinger with the head portion, as taught by Heller...” *Final Office Action* at 3-4 and 6.

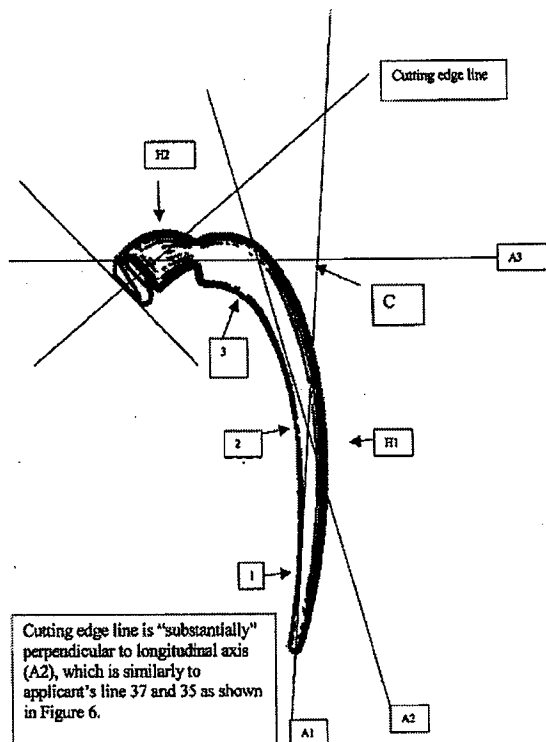
Appellant submits that the Examiner has failed to consider the Heller reference in its entirety, including the portions that teach away from combining the handle of Hollinger with the head portion of Heller. *See W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983); *see also M.P.E.P. §2141.03 VI.*

The Heller reference discloses an “eyebrow trimmer” that “consists of three basic elements, (1) the razor blade, (2) the front safety head guard for the razor, and (3) the rear safety head guard.” *Heller* at Abstract. Heller teaches that “[t]he eyebrow trimmer is mounted at a comfortable operating angle on a handle having a textured grip for easy holding and manipulating of the eyebrow trimmer.” *Id.* at Abstract and col. 2, lines 16-19 (emphasis added). The handle of the Heller device is illustrated in FIGs. 1 and 2. The handle illustrated is

essentially straight, with the textured portion described in the abstract. *Id.* at FIGs 1 and 2, and col. 2, lines 16-19.

Given this teaching in Heller, the reference actually teaches away from combining the razor head of Heller with the handle of Hollinger. First, Hollinger does not disclose a handle with at “textured grip for easy holding” as described in Heller. Second, Heller describes a “comfortable operating angle” between the head of the device and the handle. Figures 1 and 2 of Heller illustrate the angle at which the head is attached to the handle.

Referring to the figure from Hollinger as labeled by the Examiner in the Office Action dated 8/25/05, reproduced below, it can be seen that the angle at which the razor head of Hollinger is attached to the handle is less than ninety degrees (approximately 55 degrees) when measured as the angle between the “cutting edge line” and either A1 or A2. If FIG. 2 of Heller is similarly labeled (see figure below), with a line along the major longitudinal axis of the handle (“A1 or A2”) and a line perpendicular to the face of the razor head (“cutting edge line”), the resulting angle between the two (“Angle A”) is much greater than ninety degrees (approximately 135 degrees). Hence, using the same measure of the “operating angle,” Heller teaches an angle of 135 degrees, while combining the head portion of Heller with the handle of Hollinger results in an “operating angle” of approximately 55 degrees. For this reason additional reason, Heller teaches away from combining the small razor head of Heller with the handle of Hollinger.



Office Action dated 8/25/05

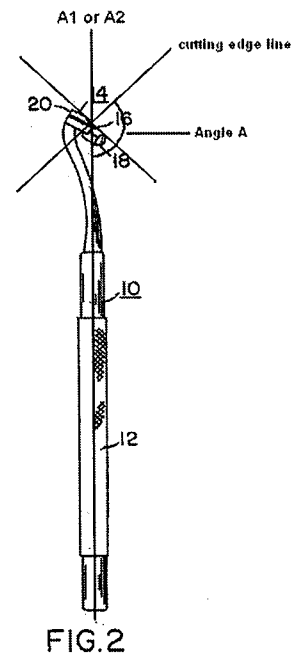


FIG.2

Heller at FIG. 2

For the additional reason that Heller teaches away from modifying the handle of Hollinger to include the head of Heller, Appellant submits that the Examiner has failed to establish that claims 1-8, 21-22, 27-28, and 33-39 are obvious in light of the cited art. Because the Examiner has failed to establish a *prima facie* case of obviousness, Appellant need not present any arguments or evidence of non-obviousness, and requests that the rejection under 35 U.S.C. §103(a) be reversed.

**b. Claims 2 and 33 – The Hollinger reference does not meet all the limitations of dependent claims 2 and 33**

In addition to not satisfying all of the limitation of independent claims 1 and 4 as discussed above, the Hollinger reference also does not disclose all of the limitations of dependent claims 2 and 33, which require that “said head portion is disposable.”

The Examiner argues that in regards to claims 2 and 33 “Hollinger discloses the invention including the head portion is disposable (14).” *Final Office Action* at 3 and 6. Appellant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 2 and 33 for the additional reason that nothing in the Hollinger reference supports the Examiner’s assertion that the head portion of the Hollinger razor is disposable.

The Examiner relies on Figure 1 from Hollinger to support his assertion. However, Figure 1 of Hollinger does not unambiguously disclose a disposable head portion, and the description of Figure 1 does not expressly disclose that the head is disposable. Because the head portion of Hollinger is not expressly disclosed as disposable, the Examiner must be relying on a inherent feature of Hollinger as disclosed in Figure 1. “[I]nherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *M.P.E.P.* §2112 ¶IV (8<sup>th</sup> ed. 2004), quoting *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (emphasis added).

Thus, the missing limitation must necessarily be present in the disclosure of Hollinger – the possibility that the head portion disclosed in Hollinger may meet the recited limitation is not sufficient. Appellant submits that while the head of Hollinger may be disposable, it is also just as likely that the head portion of Hollinger is glued or in some other way attached to the handle portion of Hollinger, and thus not disposable. As such, Hollinger cannot be said to disclose a disposable head portion, because that feature is not inherent in the Hollinger razor.

Therefore, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 2 and 33 for the additional reason that a disposable razor head is not disclosed or suggested in the cited reference. Because the Examiner has not satisfied his initial burden, Appellant need not present any arguments or evidence of non-obviousness. For at least this additional reason, Appellant respectfully submits that claims 2 and 33 are not obvious in light of the cited art, and requests that the rejection under 35 U.S.C. §103(a) be reversed.

c. **Claim 7 – The Hollinger reference does not meet all the limitations of dependent claim 7**

In addition to not satisfying all of the limitation of independent claims 1 and 4 as discussed above, the Hollinger reference also does not disclose all of the limitations of dependent claim 7 which recites the limitation “wherein said lower longitudinal portion comprises a first curved shape and said middle longitudinal portion comprises a second curved shape and wherein said first and second curved shapes form an ergonomically advantageous grip for said personal styling razor.”

The Examiner argues that “the lower longitudinal portion has a first curved shape (102) and the middle portion has a second curved shape (101), the curved shaped form an ergonomical grip (101 and 102).” *Final Office Action* at 3.

Appellant submits that portions (101) and (102) of Hollinger as identified by the Examiner in Appendix A as the lower and middle longitudinal portions are not a first curved shape and a second curved shape, but rather are a single curved shape. As explained in detail above, there is no support in Hollinger for the Examiner’s division of this single curve into two or more portions, and doing so does not create a first and second curved shape. This is in contrast to the distinct first and second curved portions of the handle shown in the embodiment illustrated in Figure 1 of the instant application.

Because the cited references do not teach or suggest all of the claim limitations, the Examiner has failed to establish a *prima facie* case of obviousness. Because the Examiner has not satisfied his initial burden, Appellant need not present any arguments or evidence of non-obviousness. Appellant therefore respectfully submits that for this additional reason, claim 7 is not obvious in light of the cited art, and requests that the rejection under 35 U.S.C. §103(a) be reversed.

**d. Claims 38 and 39 – The Hollinger reference does not meet all the limitations of dependent claims 38 and 39**

In addition to not satisfying all of the limitation of independent claims 1 and 4 as discussed above, the Hollinger reference also does not disclose all of the limitations of dependent claims 38 and 39, which require that “said cutting edge of said blade extends beyond said head portion, such that no portion of said razor head extends beyond the cutting edge of said blade, and the cutting edge of said blade is unobstructed by any portion of said razor, such that said cutting edge can shave unwanted hair from a body surface.”

The Examiner argues that “Hollinger discloses the invention including ... the cutting edge extends beyond the head portion (this is inherent or the blade could not cut) such that no portion of the head portion extends beyond the cutting edge and no part of the razor obstructs the cutting edge (Fig. 1).” *Final Office Action* at 3 and 6. Appellant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 38 and 39 for the additional reason that Figure 1 of the Hollinger reference does not support the Examiner’s assertion.

The Examiner’s assertion that “the cutting edge extends beyond the head portion (this is inherent or the blade could not cut),” is not supported by any evidence. The fact that this statement is not accurate can be demonstrated by examining the Hollinger reference. None of the figures of Hollinger show that “said cutting edge of said blade extends beyond said head portion.”

Nor is this inherent in the Hollinger razor. As stated above, “inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *M.P.E.P.* §2112 ¶IV (8<sup>th</sup> ed. 2004), quoting *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (emphasis added). The fact that the cutting edge of the blade may extend beyond the head portion is not sufficient, it must necessarily, *i.e.*, always be that way. In fact, many razors do not have a cutting edge that extends beyond the head portion.



For example, Appellant's reproduce below a portion of Figure 2 of U.S. Patent No. 4,785,534, cited by the Examiner in the final Office Action. Figure 2 shows the cross-section of a razor head having blades (8). Clearly, the cutting edge of the blade does not extend beyond the head portion as there is a portion of the head labeled (A) by Appellant which extends beyond the cutting edge of the blade.

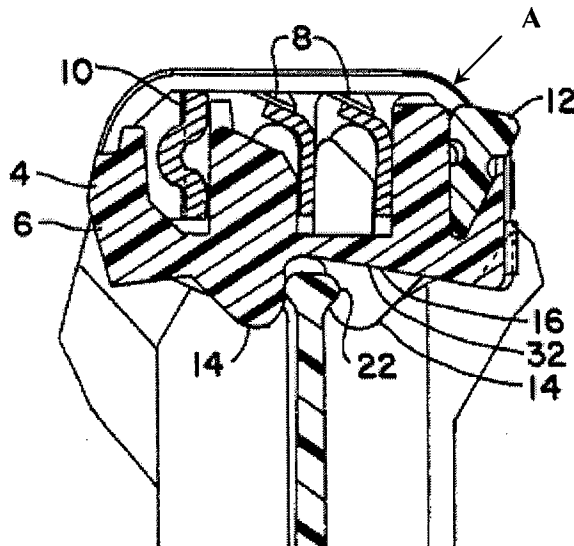


Figure 2

The layout of the blades in shown in Figure 2 is common to many safety razors, where the cutting edge of the blade is recessed relative to the supporting portion of the razor head. Thus, the Examiner's statement that "the cutting edge extends beyond the head portion (this is inherent or the blade could not cut)," is wrong. While the cutting edge of a razor blade may extend beyond the head portion, the evidence clearly demonstrates that it does not always do so. As such, the additional limitation of claims 38 and 39 are not inherent in the Hollinger disclosure.

Because the cited reference does not teach or suggest all of the claim limitations, the Examiner has failed to establish a *prima facie* case of obviousness, and Appellant need not present any arguments or evidence of non-obviousness. Appellant therefore respectfully submits that for this additional reason, claims 38 and 39 are not obvious in light of the cited art, and requests that the rejection under 35 U.S.C. §103(a) be reversed.

**e. Claims 38 and 39 – The Hollinger and Heller references do not meet all the limitations of dependent claims 22 and 28**

In addition to not satisfying all of the limitation of independent claims 1 and 4 as discussed above, the Hollinger and Heller references also do not disclose all of the limitations of dependent claims 22 and 28, which require that “said head portion is equal to or less than 1/8 inch wide.”

The Examiner argues that “Heller discloses the width to be approximately 3/6-1/4. Approximately roughly means near and 2/16 [1/8] is near 3/16. It would have been obvious to one having ordinary skill in the art at the time the invention was made to making the head portion 1/8 inch...” *Final Office Action* at 10. The Examiner argues that it would have been “an obvious matter of design choice” and that Applicant “has not disclosed that the specific head portion width provides an advantage, is used for a particular purpose, or solves a stated problem.” *Id.* Appellant respectfully disagrees.

The specification of the instant application explains at paragraph [0031]:

By combining the extremely small shaving head 38 of some embodiments with the maximized precision control allowed by the handle 31, a razor 30 can now be manufactured that can be used to shave hair from areas not previously possible. While previous razors may have been somewhat smaller than other previous razors, none of those examples [ ] are used for shaving hair as embodiments described herein allow. . . . Stylists previously broke straight razor blades to create shaving blades of the proper geometry to allow them to shave the styles requested by customers. This practice is unsafe for both the stylist and the customer. The razor 30 of the embodiments described herein allows safer shaving of such designs. *Specification* at ¶[0031].

Thus, the personal styling razor disclosed in claims 22 and 28 provides the advantage of an extremely small razor head configured to permit shaving hair, that is used for the particular purpose of shaving precise and fine details in areas that heretofore could not be safely shaved by a razor. The personal styling razor of claims 22 and 28 also solve an additional problem: the

unsafe practice of breaking straight razor blades to create shaving blades capable of precision shaving of fine details.

It is the extremely small blade and head width, combined with all of the other recited features of independent claims 1 and 4 which provide a unique razor. As discussed above, the modified device of Heller fails to disclose or suggest each and every element of independent claims 1 and 4, and therefore dependent claims 22 and 28. In addition, contrary to the Examiner's assertions, the recited head width of claims 22 and 28 solve a particular problem which was not previously solved by prior razors. Appellants submit that the Examiner has failed to establish a *prima facie* case of obviousness for this additional reason. Appellant therefore respectfully requests that, for at least these reasons, the rejection of claims 22 and 28 as obvious over be reversed.

**3. Claims 10-12, 15, 23, 24 and 40 – Rejection over Heller and Lamb**

Claims 10-12, 15, 23, and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Heller (4,700,477) in view of Lamb (D169,147), alone or further in view of Heinrich (2,139,680), and Carreker (4,461,078). *Final Office Action* at 7-9 and 12-13. Appellants submit that the rejection of these claims should be reversed for at least the following reasons.

**a. Claims 10-12, 15, 23, 24 and 40 – The cited references teach away from the proposed modification of Heller to include the handle of Lamb**

Independent claim 10 recites in part: "wherein said handle portion further comprises a front or rear perspective that is substantially hour-glass in shape, having: a lower longitudinal portion of a first curved shape; and a middle longitudinal portion of a second curved shape attached lengthwise to said first lower longitudinal portion; wherein a waist portion is formed between said first curved shape and said second curved shape." Thus, dependent claims 11-12, 15, 23, 24 and 40 also require this limitation as they depend from claim 10.

The Examiner rejects claim 10 under 35 U.S.C. § 103(a) as being unpatentable over a combination of Heller in view of the Lamb design patent (D169,147). The Examiner states that

Heller discloses the invention, but fails to disclose an ergonomically shaped handle or a handle portion that has a front perspective that is substantially hour-glass in shape. The Examiner argues that Lamb teaches that it is old and well known in the art of razor handles to incorporate an ergonomically shaped handle and the handle portion has a front perspective that is substantially hour-glass shaped, and “therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Heller with an ergonomically shaped handle, as taught by Lamb...” *Final Office Action* at 8.

Appellant respectfully disagrees. Appellant submits that the Examiner has failed to consider the Heller reference in its entirety, including the portions that teach away from combining the handle of Hollinger with the head portion of Heller. *See W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983); *see also M.P.E.P. §2141.03 VI.*

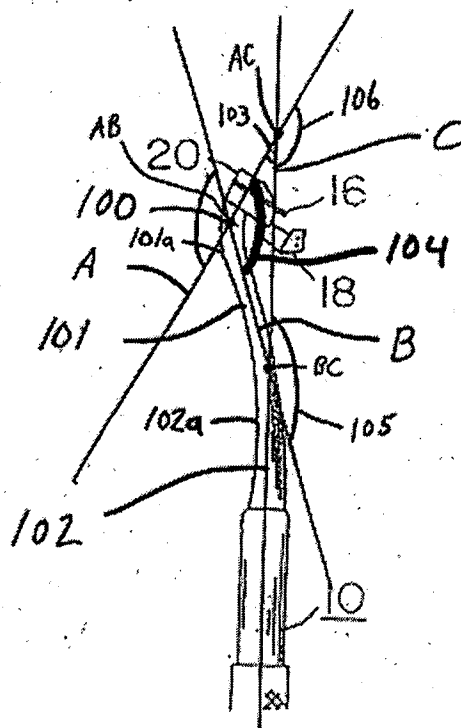
Heller states that “the principle prior art in the field of developing an eyebrow trimmer has been the man’s safety razor,” but one of the problems with using a standard safety razor to trim eyebrows is that the large blades prevent accurate trimming. *See Heller* at col. 1, lines 29-36. The combination of the small head and razor of Heller on the handle of Lamb would render the device of Heller inoperable for its intended purpose of trimming eyebrows because the large bulbous end of the Lamb handle would obscure the small head of Heller, and the user would not be able to accurately trim the eyebrows. *See MPEP § 2143.01* (“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.”).

Thus, because Heller has identified the prior art of standard safety razors as inadequate for solving the problem of trimming eyebrows, one of skill in the art following the teachings of Heller would not look to a standard safety razor handle like Lamb to modify the device of Heller.

The Examiner responds by arguing that “[l]ooking at Lamb, below the razor head and above the handle is a stem portion. This stem portion is the equivalent to the stem portion 10 in Heller. The handle of Lamb is the equivalent to the handle 12 in Heller. Replacing the portion 12 only of Heller with the handle portion of Lamb would still allow the user to perform the intended use.” *Final Office Action* at 13 (emphasis added).

This argument is inconsistent with the Examiner's arguments on page 7 and Appendix C which identifying the "stem portion" 10 of Heller as the handle. In particular, the Examiner argues that "Heller discloses the invention including a handle portion (10), ... the handle portion further comprising a lower longitudinal portion of a first curved shape (102a), a middle longitudinal portion of a second curved shape attached lengthwise to the lower longitudinal portion (101a)..." *Final Office Action* at 7-8 (emphasis added), and Appendix C. Appellant has reproduced Appendix C below.

Appendix C



As can be seen from Appendix C, the Examiner is taking the inconsistent position that portion 10 of Heller is a "handle portion," while simultaneously arguing that portion 10 of Heller is a "stem portion."

Because there is no reason to modify the device of Heller by combining the Heller and Lamb references, and the combination would render Heller unsatisfactory for its intended purpose, the Examiner has failed to establish a *prima facie* case of obviousness. Because the Examiner has failed to establish a *prima facie* case of obviousness, Appellant need not present any arguments or evidence of non-obviousness, and requests that the rejection of claims 10-12, 15, 23, 24 and 40 under 35 U.S.C. §103(a) be reversed.

**b. Claim 11 – The cited references do not meet all the limitations of dependent claim 11**

In addition to failing to establish a *prima facie* case of obviousness with respect to independent claim 10 discussed above, the Examiner has not established that the cited references disclose all of the limitations of dependent claim 11, which require that “said head portion is disposable.”

The Examiner argues that Heller in view of Lamb disclose the invention “but fail to disclose a replaceable head portion...” *Final Office Action* at 8. The Examiner states that “Heinrich teaches a replaceable head portion (16)...” *Id.* The Examiner has previously argued that “[w]hen the head is apart from the shaft it is old and well known that one could throw it away making it capable of being disposable.” *Office Action dated 4/18/07* at 11.

Appellants submit that Heinrich does not disclose a disposable head as recited in claim 11. To the extent Heinrich discloses a head portion, the Heinrich device does not include a disposable *head portion*, only a removable *razor blade*. Nothing in Heinrich teaches that either the blade holder 21 or head portion 10 are disposable. Specifically, Heinrich states “10 designates a plate, preferably formed of metal, which serves as the frame or support for the blade” (col. 1, lines 38-40) and “[f]ormed integral with the underside of plate 10 . . . is a stud 12 in which is formed a threaded recess for the accommodation of the threaded stem 13 of a handle 14” (col. 1, lines 45-49). Plate 10, upon which razor blade 17 is held against movement by combined guard and blade holder 21, is a machined part, comprising a threaded recess to receive a threaded stem 13, upwardly projecting studs 15 to receive notches 17 on the razor blade, teeth

11 that function as guards, and stud 16 to receive aperture 20 on the razor blade. Clearly, the highly-machined plate 10 is not intended to be disposed of along with the razor blade when the blade is worn and requires replacement.

According to the Examiner's argument that Heinrich comprises a disposable head portion because it can be thrown away and is therefore "capable of being disposable," the entire Heinrich device, with the assembled blade holder 21, blade 17, plate 10, and handle 14 is also "disposable" because it can be thrown away. The Examiner's argument applies to everything, from luxury cars to skyscrapers, because they are "capable of being disposable." Were the Examiner's definition of "disposable" adopted, the distinction between "disposable" and "non-disposable" items would not exist. Thus, the highly-machined head portion of the Heinrich device is not "disposable" in any ordinary sense of the word. Heinrich only discloses disposable *razor blades* situated on a plate that is not disposed of or replaced when a new razor blade is required.

Because the cited references do not teach or suggest all of the claim limitations, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 11, and Appellant need not present any arguments or evidence of non-obviousness. Appellant therefore respectfully submits that for this additional reason, claim 11 is not obvious in light of the cited art, and requests that the rejection under 35 U.S.C. §103(a) be reversed.

**c. Claim 12 – The cited references do not meet all the limitations of dependent claim 12**

In addition to failing to establish a *prima facie* case of obviousness with respect to independent claim 10 discussed above, the Examiner has not established that the cited references disclose all of the limitations of dependent claim 12, which require that "said head portion is pivotally mounted on said handle portion."

With regard to Claim 12, the Examiner states that "Heinrich teaches a replaceable head portion (16) that is pivotally mounted on the handle portion (13)." *Final Office Action* at 8. In a previous Office Action, the Examiner further elaborated, stating that: "In order for the head of

Heinrich to be mounted onto the body, it must be rotated or pivoted about shaft 13 (like a screw), making it pivotally mounted to the handle.” *Office Action dated 4/18/07* at 11.

However, the head portion of Heinrich is threaded onto the handle, it is not pivotally mounted. Heinrich states “the studs 15 in the notches 19 and the stud 16 in the aperture 20, firmly holds the blade against any lateral or twisting movement while positioned upon the holder,” (col. 2, lines 10-14) and “the blade is held against movement in all directions upon the plate 10” (col. 2, lines 44-45). Finally, Heinrich also states “the parts of the razor are firmly retained in assembled relation” (col. 2, lines 52-53).

In contrast, the specification states in paragraph [0030]: “In some embodiments, the shaving head 38 is mounted via a pivoting joint (not shown) such that the angle of the shaving head 38 can vary with respect to the rest of the razor 30 during shaving allowing its use in various applications. Any pivot joint capable of rotatably connecting the shaving head 38 to the upper longitudinal portion 36 can be used.” Thus, after reading Claim 12 in view of the specification, it is clear that the angle of the pivotally-mounted head portion relative to the handle portion can vary *when the personal styling razor is in use*, as it can pivot around its pivoting joint. However, the head portion of Heinrich, to the extent it discloses one, is completely stationary relative to the handle *when the device is in use*. Specifically, blade 17 “is held against movement in all directions upon the plate 10,” and plate 10, once screwed in place into handle 14, does not move relative to handle 14 when the device is in use. The act of rotating plate 10 to screw it into handle 14 occurs when the Heinrich device is assembled, and must be complete before the Heinrich device can be used as a razor. In fact, Heinrich specifically teaches away from the inclusion of any pivoting parts when the device is in use, stating: “Thus, the parts of the razor are firmly retained in assembled relation and said razor may be conveniently used for cutting hairs from the nostrils and ears.” (col. 2, lines 52-55).

Because the cited references do not teach or suggest all of the claim limitations, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 12, and Appellant need not present any arguments or evidence of non-obviousness. Appellant therefore



respectfully submits that for this additional reason, claim 12 is not obvious in light of the cited art, and requests that the rejection under 35 U.S.C. §103(a) be reversed.

**d. Claim 24 – The Heller and Lamb references do not meet all the limitations of dependent claim 24**

In addition to not satisfying all of the limitation of independent claim 10 as discussed above, the Heller and Lamb references also do not disclose all of the limitations of dependent claim 24, which requires that “said head portion is equal to or less than 1/8 inch wide.”

The Examiner argues that “Heller discloses the width to be approximately 3/6-1/4. Approximately roughly means near and 2/16 [1/8] is near 3/16. It would have been obvious to one having ordinary skill in the art at the time the invention was made to making the head portion 1/8 inch...” *Final Office Action* at 12. The Examiner argues that it would have been “an obvious matter of design choice” and that Applicant “has not disclosed that the specific head portion width provides an advantage, is used for a particular purpose, or solves a stated problem.” *Id.* at 12-13. Appellant respectfully disagrees.

The specification of the instant application explains at paragraph [0031]:

By combining the extremely small shaving head 38 of some embodiments with the maximized precision control allowed by the handle 31, a razor 30 can now be manufactured that can be used to shave hair from areas not previously possible. While previous razors may have been somewhat smaller than other previous razors, none of those examples [ ] are used for shaving hair as embodiments described herein allow. . . . Stylists previously broke straight razor blades to create shaving blades of the proper geometry to allow them to shave the styles requested by customers. This practice is unsafe for both the stylist and the customer. The razor 30 of the embodiments described herein allows safer shaving of such designs. *Specification* at ¶[0031].

Thus, the personal styling razor disclosed in claim 40 provides the advantage of an extremely small razor head configured to permit shaving hair, that is used for the particular purpose of shaving precise and fine details in areas that heretofore could not be safely shaved by a razor. The personal styling razor of claim 40 also solve an additional problem: the unsafe

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practice of breaking straight razor blades to create shaving blades capable of precision shaving of fine details.

It is the extremely small blade and head width, combined with all of the other recited features of independent claim 10 which provide a razor with improved shaving properties. As discussed above, the modified device of Heller in view of Lamb fails to disclose or suggest each and every element of independent claim 10, and therefore dependent claim 24. In addition, contrary to the Examiner's assertions, the recited head width of claim 24 solves a particular problem which was not previously solved by prior razors. Appellants submit that the Examiner has failed to establish a *prima facie* case of obviousness for this additional reason. Appellant therefore respectfully requests that, for at least these reasons, the rejection of claim 24 as obvious over be reversed.

**4. Claims 10 and 40 – Rejection over Hollinger, Heller and Smith**

Claims 10 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hollinger in view of Heller and Smith (4,335,509). *Final Office Action* at 10-12. Appellants note that this is a new rejection of claim 10 which was made final. The Examiner states that it was necessitated by the amendment adding new claim 40, and therefore the finality of the rejection is proper. However, the addition of a new dependent claim does provide a proper basis for making final an Office Action which provides a new rejection of an independent claim which was not amended in the previous response.

Regardless of the impropriety of making the rejection final, Appellants submit that the rejection of these claims should be reversed for at least the following reasons.

**a. Claims 10 and 40 – The modified Hollinger reference does not meet all the limitations of independent claim 10, and the cited references teach away from the proposed modifications**

Independent claim 10, and therefore dependent claim 40, requires that the handle have “a lower longitudinal portion of a first curved shape; and a middle longitudinal portion of a second

curved shape attached lengthwise to said first lower longitudinal portion.” The Examiner has failed to establish that the cited references contain this limitation.

The Examiner argues that “Hollinger discloses the invention including a handle portion (100-102),... the handle portion further comprises a lower longitudinal portion of a first curved shape (102), and a middle longitudinal portion of a second curved shape attached lengthwise to the lower longitudinal portion (101).” *Final Office Action* at 11.

Appellant submits that portions (101) and (102) of Hollinger as identified by the Examiner in Appendix A as the lower and middle longitudinal portions are not a first curved shape and a second curved shape, but rather are a single curved shape. As explained in detail above, there is no support in Hollinger for the Examiner’s division of this single curve into two or more portions, and doing so does not create a first and second curved shape. This is in contrast to the distinct first and second curved portions of the handle shown in the embodiment illustrated in Figure 1 of the instant application.

Because the cited reference does not teach or suggest all of the claim limitations, the Examiner has failed to establish a *prima facie* case of obviousness, and Appellant need not present any arguments or evidence of non-obviousness. Appellant therefore respectfully submits that for at least this reason, claims 10 and 40 are not obvious in light of the cited art, and requests that the rejection under 35 U.S.C. §103(a) be reversed.

In addition to failing to establish that the cited art teaches the limitation discussed above, the Examiner has also failed to establish that the cited references can be combined to meet the limitation of independent claim 10, and therefore dependent claim 40 as well, “wherein said handle portion further comprises a front or rear perspective that is substantially hour-glass in shape, having: a lower longitudinal portion of a first curved shape; and a middle longitudinal portion of a second curved shape attached lengthwise to said first lower longitudinal portion; wherein a waist portion is formed between said first curved shape and said second curved shape.”

As discussed above, the Examiner incorrectly argues that Hollinger discloses “a lower longitudinal portion of a first curved shape; and a middle longitudinal portion of a second curved shape attached lengthwise to said first lower longitudinal portion.” The Examiner admits that

Hollinger fails to disclose a substantially hour-glass shaped handle. *Final Office Action* at 11. However, to overcome this deficiency, the Examiner argues that “Smith teaches it is old and well known in the art of razor handles to incorporate a substantially hour-glass shaped handle portion with a waist in between the lower and middle longitudinal portions (Figs. 1-3).” *Id.* at 12. The Examiner concludes that “[t]herefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Hollinger with the handle portion, as taught by Smith...” *Id.*

Appellant submits that this argument is flawed for at least the following reasons. First, as discussed above, Hollinger does not meet the limitation of a handle having “a lower longitudinal portion of a first curved shape; and a middle longitudinal portion of a second curved shape attached lengthwise to said first lower longitudinal portion.” The Examiner has not established, and it is not apparent from Figs. 1-3 of Smith, that Smith meets this limitation. Therefore, combining Hollinger and Smith does not meet this limitation. Second, while Smith discloses an indentation in the handle, the handle of Smith is not substantially hour-glass shaped. Thus, combining Hollinger and Smith fails to meet the limitation “wherein said handle portion further comprises a front or rear perspective that is substantially hour-glass in shape.”

For at least this additional reason, the cited reference does not teach or suggest all of the claim limitations, and therefore the Examiner has failed to establish a *prima facie* case of obviousness. As a result, Appellant need not present any arguments or evidence of non-obviousness. Appellant therefore respectfully submits that for at least this additional reason, claims 10 and 40 are not obvious in light of the cited art, and requests that the rejection under 35 U.S.C. §103(a) be reversed.

Finally, in addition to failing to establish that the cited art teaches the limitations discussed above, the Examiner has also failed to establish that the cited references can be combined to meet the limitation of independent claim 10, and therefore dependent claim 40 as well, “wherein said head portion is less than or equal to 1/2 inch wide.”

The Examiner argues that “Heller teaches it is old and well known in the art of razors to incorporate a head portion is that [*sic*] equal to or less than 1/2” wide (Column 2 lines 27-28).

Therefore, it would be obvious to one of ordinary skill in the art, at the time of the invention, to have provided Hollinger with the head portion, as taught by Heller..." *Final Office Action* at 11.

Appellant submits that the Examiner has failed to consider the Heller reference in its entirety, including the portions that teach away from combining the handle of Hollinger with the head portion of Heller. *See W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983); *see also M.P.E.P. §2141.03 VI.*

The Heller reference discloses an "eyebrow trimmer" that "consists of three basic elements, (1) the razor blade, (2) the front safety head guard for the razor, and (3) the rear safety head guard." *Heller* at Abstract. Heller teaches that "[t]he eyebrow trimmer is mounted at a comfortable operating angle on a handle having a textured grip for easy holding and manipulating of the eyebrow trimmer." *Id.* at Abstract and col. 2, lines 16-19 (emphasis added). The handle of the Heller device is illustrated in FIGs. 1 and 2. The handle illustrated is essentially straight, with the textured portion described in the abstract. *Id.* at FIGs 1 and 2, and col. 2, lines 16-19.

Given this teaching in Heller, the reference actually teaches away from combining the razor head of Heller with the handle of Hollinger. First, Hollinger does not disclose a handle with at "textured grip for easy holding" as described in Heller. Second, Heller describes a "comfortable operating angle" between the head of the device and the handle. Figures 1 and 2 of Heller illustrate the angle at which the head is attached to the handle.

Referring to the figure from Hollinger as labeled by the Examiner in the Office Action dated 8/25/05, reproduced below, it can be seen that the angle at which the razor head of Hollinger is attached to the handle is less than ninety degrees (approximately 55 degrees) when measured as the angle between the "cutting edge line" and either A1 or A2. If FIG. 2 of Heller is similarly labeled (see figure below), with a line along the major longitudinal axis of the handle ("A1 or A2") and a line perpendicular to the face of the razor head ("cutting edge line"), the resulting angle between the two ("Angle A") is much greater than ninety degrees (approximately 135 degrees). Hence, using the same measure of the "operating angle," Heller teaches an angle of 135 degrees, while combining the head portion of Heller with the handle of Hollinger results

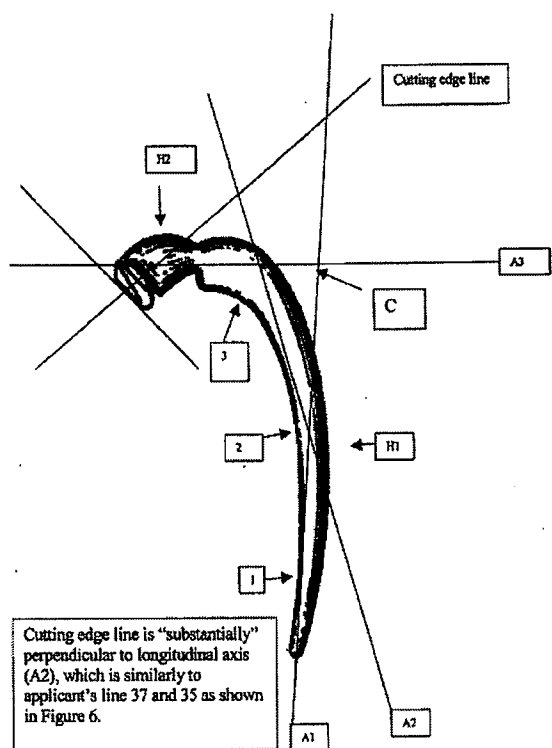
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in an "operating angle" of approximately 55 degrees. For this reason additional reason, Heller teaches away from combining the small razor head of Heller with the handle of Hollinger.



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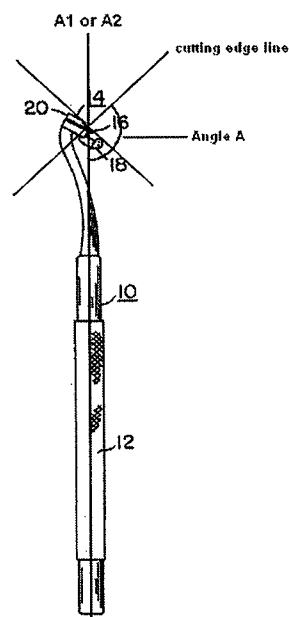


FIG. 2

Heller at FIG. 2

For the additional reason that Heller teaches away from modifying the handle of Hollinger to include the head of Heller, Appellant submits that the Examiner has failed to establish that claims 10 and 40 are obvious in light of the cited art. Because the Examiner has failed to establish a *prima facie* case of obviousness, Appellant need not present any arguments or evidence of non-obviousness, and requests that for this additional reason, the rejection under 35 U.S.C. §103(a) be reversed.

**b. Claim 40 – The Hollinger reference does not meet all the limitations of dependent claim 40**

In addition to not satisfying all of the limitation of independent claim 10 as discussed above, the Hollinger reference also does not disclose all of the limitations of dependent claim 40, which requires that “said cutting edge of said blade extends beyond said head portion, such that no portion of said razor head extends beyond the cutting edge of said blade, and the cutting edge of said blade is unobstructed by any portion of said razor, such that said cutting edge can shave unwanted hair from a body surface.”

The Examiner argues that “Hollinger discloses the cutting edge extends beyond the head portion (this is inherent or the blade could not cut) such that no portion of the head portion extends beyond the cutting edge and no part of the razor obstructs the cutting edge (Fig. 1).” *Final Office Action* at 11. Appellant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 40 for the additional reason that Figure 1 of the Hollinger reference does not support the Examiner’s assertion.

The Examiner’s assertion that “the cutting edge extends beyond the head portion (this is inherent or the blade could not cut),” is not supported by any evidence. The fact that this statement is not accurate can be demonstrated by examining the Hollinger reference. None of the figures of Hollinger show that “said cutting edge of said blade extends beyond said head portion.”

Nor is this inherent in the Hollinger razor. As stated above, “inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result

from a given set of circumstances is not sufficient.” *M.P.E.P.* §2112 ¶IV (8<sup>th</sup> ed. 2004), quoting *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (emphasis added). The fact that the cutting edge of the blade may extend beyond the head portion is not sufficient, it must necessarily, *i.e.*, always be that way. In fact, many razors do not have a cutting edge that extends beyond the head portion.

For example, Appellant’s reproduce below a portion of Figure 2 of U.S. Patent No. 4,785,534, cited by the Examiner in the final Office Action. Figure 2 shows the cross-section of a razor head having blades (8). Clearly, the cutting edge of the blade does not extend beyond the head portion as there is a portion of the head labeled (A) by Appellant which extends beyond the cutting edge of the blade.

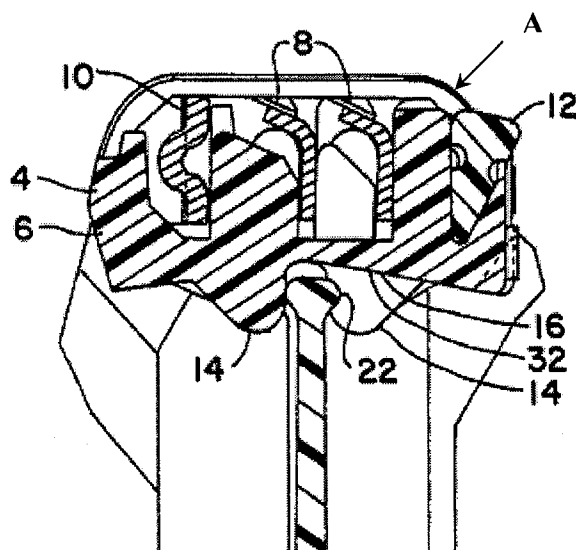


Figure 2

The layout of the blades in shown in Figure 2 is common to many safety razors, where the cutting edge of the blade is recessed relative to the supporting portion of the razor head. Thus, the Examiner’s statement that “the cutting edge extends beyond the head portion (this is inherent or the blade could not cut),” is wrong. While the cutting edge of a razor blade may extend beyond the head portion, the evidence clearly demonstrates that it does not always do so. As such, the additional limitation of claim 40 is not inherent in the Hollinger disclosure.



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Because the cited reference does not teach or suggest all of the claim limitations, the Examiner has failed to establish a *prima facie* case of obviousness, and Appellant need not present any arguments or evidence of non-obviousness. Appellant therefore respectfully submits that for this additional reason, claim 40 is not obvious in light of the cited art, and requests that the rejection under 35 U.S.C. §103(a) be reversed.

**C. Conclusion**

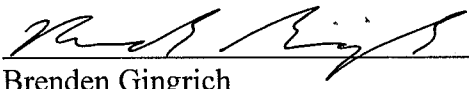
Appellant submits that for at least the reasons stated above, the Examiner has failed to meet his initial burden of establishing a *prima facie* case that the pending claims are obvious in view of the cited references. Because the Examiner has not met his initial burden, Appellant need provide any argument or evidence of non-obvious. In view of the deficiencies in the Examiner's rejections discussed above, Appellant respectfully requests that the Examiner's rejections of the pending claims under 35 U.S.C. § 103(a) over the cited references be reversed.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 2/19/08

By:   
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## VIII. CLAIMS APPENDIX

1. A personal styling razor, comprising:
  - a handle portion having lower, middle and upper longitudinal portions; and
  - a head portion, having a razor blade with a straight cutting edge, attached to said upper longitudinal portion wherein said head portion and said razor blade are configured to permit shaving hair;
    - wherein said cutting edge of said razor blade is substantially perpendicular to a longitudinal axis of the handle;
    - wherein said lower longitudinal portion extends along a first axis, said middle longitudinal portion extends along a second axis and said upper longitudinal portion extends along a third axis;
    - wherein said second and third axes intersect at a single point and form a fixed extension angle that is less than or equal to ninety degrees;
    - wherein said extension angle is defined by a portion of said second axis starting from the intersection of said second and third axes and extending toward the intersection of the first and second axes, and a portion of said third axis starting from the intersection of said second and third axes and extending toward the razor head, wherein the extension angle faces the front of the razor;
    - wherein said first and said second axes intersect at a single point and form a fixed contour angle that is less than 180 degrees;
    - wherein said contour angle is defined by a portion of said first axis starting from the intersection of said first and second axes and extending toward the end of said razor handle portion located on said lower handle portion, and a portion of said second axis starting from the intersection of said first and second axes and extending toward the intersection of said second and third axes, wherein the contour angle faces the front of the razor; and
    - wherein said head portion has a width of less than or equal to one inch.
2. The personal styling razor of Claim 1, wherein said head portion is disposable.

3. The personal styling razor of Claim 1, wherein said head portion is pivotally mounted on said handle portion.

4. A personal styling razor, comprising:

a handle portion having lower, middle and upper longitudinal portions; and

a head portion, having a razor blade with a straight cutting edge, attached to said upper longitudinal portion wherein said head portion and said razor blade are configured to permit shaving hair;

wherein said cutting edge of said razor blade is substantially perpendicular to a longitudinal axis of the handle;

wherein said lower longitudinal portion extends along a first axis, said middle longitudinal portion extends along a second axis and said upper longitudinal portion extends along a third axis;

wherein said second and third axes intersect at a single point and form a fixed extension angle wherein said extension angle is greater than ninety degrees;

wherein said extension angle is defined by a portion of said second axis starting from the intersection of said second and third axes and extending toward the intersection of the first and second axes, and a portion of said third axis starting from the intersection of said second and third axes and extending toward the razor head, wherein the extension angle faces the front of the razor;

wherein said first and said second axes intersect at a single point and form a fixed contour angle that is less than 180 degrees;

wherein said contour angle is defined by a portion of said first axis starting from the intersection of said first and second axes and extending toward the end of said razor handle portion located on said lower handle portion, and a portion of said second axis starting from the intersection of said first and second axes and extending toward the intersection of said second and third axes, wherein the contour angle faces the front of the razor; and

wherein said head portion has a width of less than or equal to one inch.

5. The personal styling razor of Claim 1, wherein a length of said upper longitudinal portion is greater than said width of said head portion.

6. The personal styling razor of Claim 1, further comprising a second razor blade mounted substantially parallel to said razor blade.

7. The personal styling razor of Claim 1, wherein said lower longitudinal portion comprises a first curved shape and said middle longitudinal portion comprises a second curved shape and wherein said first and second curved shapes form an ergonomically advantageous grip for said personal styling razor.

8. The personal styling razor of Claim 1, further comprising a glide surface area and a blade area, wherein said glide surface area is larger than said blade area.

9. (Canceled).

10. A detail shaving razor, comprising:  
an ergonomically shaped handle portion; and  
a head portion attached to said handle portion and formed with at least one razor blade having a straight cutting edge wherein said head portion and said razor blade are configured to permit shaving hair;

wherein said head portion is less than or equal to 1/2 inch wide;

wherein said cutting edge of said razor blade is substantially perpendicular to a longitudinal axis of the handle;

wherein said handle portion is adapted to provide increased control over the head portion during shaving;

wherein said handle portion further comprises a front or rear perspective that is substantially hour-glass in shape, having:

a lower longitudinal portion of a first curved shape; and

a middle longitudinal portion of a second curved shape attached lengthwise to said first lower longitudinal portion;

wherein a waist portion is formed between said first curved shape and said second curved shape.

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11. The detail shaving razor of Claim 10, wherein said head portion is disposable.
12. The detail shaving razor of Claim 10, wherein said head portion is pivotally mounted on said handle portion.
- 13-14. (Canceled).
15. The detail shaving razor of Claim 10, further comprising a second razor blade mounted substantially parallel to said razor blade.
- 16-20. (Canceled).
21. The personal styling razor of Claim 1, wherein said head portion is equal to or less than 1/4 inch wide.
22. The personal styling razor of Claim 1, wherein said head portion is equal to or less than 1/8 inch wide.
23. The detail shaving razor of Claim 10, wherein said head portion is equal to or less than 1/4 inch wide.
24. The detail shaving razor of Claim 10, wherein said head portion is equal to or less than 1/8 inch wide.
- 25-26. (Canceled).
27. The personal styling razor of Claim 4, wherein said head portion is equal to or less than 1/4 inch wide.
28. The personal styling razor of Claim 4, wherein said head portion is equal to or less than 1/8 inch wide.
- 29-32. (Canceled).
33. The personal styling razor of Claim 4, wherein said head portion is disposable.
34. The personal styling razor of Claim 4, wherein said head portion is pivotally mounted on said handle portion.
35. The personal styling razor of Claim 4, wherein a length of said upper longitudinal portion is greater than said width of said head portion.
36. The personal styling razor of Claim 4, further comprising a second razor blade mounted substantially parallel to said razor blade.

37. The personal styling razor of Claim 4, further comprising a glide surface area and a blade area, wherein said glide surface area is larger than said blade area.

38. The personal styling razor of Claim 1, wherein said cutting edge of said blade extends beyond said head portion, such that no portion of said razor head extends beyond the cutting edge of said blade, and the cutting edge of said blade is unobstructed by any portion of said razor, such that said cutting edge can shave unwanted hair from a body surface.

39. The personal styling razor of Claim 4, wherein said cutting edge of said blade extends beyond said head portion, such that no portion of said razor head extends beyond the cutting edge of said blade, and the cutting edge of said blade is unobstructed by any portion of said razor, such that said cutting edge can shave unwanted hair from a body surface.

40. The detail shaving razor of Claim 10, wherein said cutting edge of said blade extends beyond said head portion, such that no portion of said razor head extends beyond the cutting edge of said blade, and the cutting edge of said blade is unobstructed by any portion of said razor, such that said cutting edge can shave unwanted hair from a body surface.

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### **IX. EVIDENCE APPENDIX**

Appellant does not rely on any evidence as defined by 37 C.F.R. § 41.37(c)(1)(ix).

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#### **X. RELATED PROCEEDINGS APPENDIX**

Appellants are unaware of any related appeals or interferences as defined by 37 C.F.R.

§ 41.37(c)(1)(ii).